

- Shade Tree -

FILE OF THE CITY COUNCIL

NO. 8 Session of 2003

MOVED BY ERIC WATERS, JANUARY 8, 2003

An ordinance amending Chapter 10-101 of the Codified Ordinances of the City of Harrisburg, Shade Trees, by changing the responsibility of maintenance thereof.

WHEREAS, the City of Harrisburg Department of Parks and Recreation possesses neither the necessary manpower nor the fiscal resources to maintain and trim all shade trees located on and along the streets and highways in the City as well as tend those located in City parks; and

WHEREAS, the owners of the property in front of which such shade trees are located are also the owners of these shade trees, such property owners should be responsible for the maintenance and trimming of all such shade trees as well as the cost and expense incurred in the elimination of an emergency public safety hazard created by any such tree.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HARRISBURG, AND IT IS HEREBY ENACTED BY AUTHORITY OF THE SAME, as follows:

SECTION 1. Chapter 10-101 of the Codified Ordinances of the City of Harrisburg is amended as follows:

10-101.1 CUSTODY AND CONTROL OF SHADE TREES

The Department of Parks and Recreation (hereinafter "Department") shall have exclusive custody and control over the planting, removal and protection of the trees on and along the streets and highways in the City (hereinafter "Shade Trees"). The Department may require the planting or replanting of Shade Trees along the streets and highways in the City. The kind of tree and the alignment and location of trees shall be determined by the Department but shall not prevent necessary and reasonable use of the streets, sidewalks or abutting property or the conduct of business.

10-101.2 ALLOCATION OF COSTS; ASSESSMENTS

(a) The cost of furnishing, planting, transplanting or removing any Shade Trees, or of furnishing the necessary suitable guards, curbing, or grading for the protection thereof and of the replacing of any pavement or sidewalk necessarily disturbed in the execution of such work, shall be paid by the owner of the real estate in front of whose property the work is done, except that part of such cost may be certified by the Department to City Council and to the City Treasurer as a

charge to be paid by the City. The amount each owner is to pay shall be ascertained and certified by the Department to Council and to the City Treasurer.

(b) Upon the filing of the certificate with the Council, the Department shall cause thirty (30) days written notice to be given by mail to the person against whose property an assessment has been made. The notice shall state the amount of the assessment and the time and place of payment and shall be accompanied by a copy of the certificate. The expense of the notice shall be paid by the City.

(c) The amount assessed against the real estate shall be a lien from the time of the filing of the certificate with the Council, and, if not paid within the time designated in the notice, a claim may be filed and collected in the same manner as municipal claims are filed and collected.

10-101.3

COST OF MAINTENANCE

The responsibility for and cost and expense of maintaining, trimming and caring for Shade Trees after having been planted shall be borne by the owners of the property in front of which such Shade Trees are situated (hereinafter "Property Owner"); Provided, however, that this subsection shall not apply to owner-occupants over the age of 65.

10-101.4**PERMITS**

- (a) Without having first obtained a permit from the Department to do so, no person shall:
 - (A) plant, cut, trim, or remove any Shade Tree under the jurisdiction of the Department;
 - (B) fasten any sign, wire, rope or other material to, around or through any such Shade Tree; or
 - (C) deposit, place, store or maintain any stone, brick, sand, concrete or other material which may impede the free passage of water, air, or fertilizer to the roots of any such Shade Tree.
- (b) No person shall move any building or other object on or over any public street within the City in such a manner as to damage or injure any Shade Tree or shrub in such street unless such person has first obtained a permit from the Department to do so.

10-101.5**PERMIT CONDITIONS**

As a condition to the granting of any permit to move any building or object on or over any public street, any appropriate City department may require the applicant to furnish bond in an amount sufficient to cover any damage or injury to any Shade Tree or shrubs in such street, and it may direct the route of any such moving so as to minimize damage or injury to Shade Trees and shrubs.

10-101.6**CONDITIONS ON PERMIT**

As a condition to any permit to remove any Shade Tree, the Department may require that the applicant plant, at applicant's expense, another tree in place of the one removed. The Department in such case shall direct the type, size and location of the tree to be planted and the time within which the planting shall be accomplished.

10-101.7**CHARGES FOR DELIBERATE DAMAGE OR DESTRUCTION**

If a Shade Tree is damaged by any person, the Department may assess a charge for repairs to the tree, plus the devaluation of the tree, against the person causing the damage to the said tree. In the event of a Shade Tree being destroyed by any person, the Department may assess a charge for the appraised value of the tree, plus the cost of removal and replacement thereof, against the person causing the destruction of said tree.

10-101.8**CHARGES FOR ACCIDENTAL DAMAGE OR DESTRUCTION**

If any Shade Tree or other tree located on private property is felled by a storm or other casualty in such manner that the tree, branches or stump obstructs a public street or cartway in the City, and the Property Owner fails to take immediate action to remove the obstruction, the City shall remove or cause the removal from the cartway of said tree, branches or stump thereof as efficiently as possible, and the cost thereof shall be assessed to the Property Owner as provided by law. Replacement of such trees will be made at the discretion of the Department.

10-101.9**PROHIBITION AGAINST INJURY TO SHADE TREES**

No person shall break, injure, mutilate, kill, or destroy any Shade Tree or set fire or permit any fire or burn anything where such fire or the heat thereof will injure any Shade Tree, and no person shall knowingly permit any leak to exist in any gas or steam pipe or main within the root zone of any Shade Tree or permit any toxic chemical, either solid or liquid, to seep, drain or be emptied on or about any such Shade Tree, or permit any wire designed to carry electric current to come in contact with any Shade Tree unless protected by a method approved by the Department. No person shall attach any electric installation to any Shade Tree or excavate any ditches, tunnels, trenches or lay any driveway within a radius of ten (10) feet of any Shade Tree without first obtaining a written permit from the Department.

10-101.10 CUTTING OFF ELECTRICAL SERVICE

Whenever the Department determines it to be necessary to cut off electrical service in order to prune or remove any Shade Tree or for any other reason because of the proximity of a Shade Tree to a service wire, it shall serve written notice on the owner of such wire that service must be interrupted, and said owner shall comply with such notice within twenty-four (24) hours.

10-101.11**PUBLIC UTILITY INSTALLATIONS**

All permits issued for the installation of public utility facilities shall have a prior approval by the Director of the Department and the City Engineer.

10-101.12**TRIMMING OF TREES OVERHANGING STREETS**

The Property Owner shall trim branches from any Shade Trees overhanging the streets and highways of the City so that such branches shall not obstruct the visibility of any traffic control device or the light from any street light and so that there shall be clear height of fifteen (15) feet above the surface of the street or sidewalk.

10-101.13**PLANTING SPECIFICATIONS**

(a) The Department shall plant, or permit to be planted, Shade Trees of not less than one and one-half (1½) to two (2) inch caliper, eighteen (18) inches above the ground, symmetrical in shape with a trunk clean and straight without branches for a distance of four (4) feet from the ground.

(b) The planting of any species other than those on the approved list on file in the Department office is prohibited unless approved by the Department Director in writing.

10-101.14**SPACING**

(a) The space between newly planted Shade Trees shall not be less than forty (40) feet nor more than sixty (60) feet and may vary with the kind of tree planted. No Shade Tree shall be planted less than twenty-five (25) feet from a curb intersection nor less than ten (10) feet from a fire hydrant, sewer inlet, light standard or utility pole.

(b) No Shade Tree shall be planted along any street or highway where the distance between building lines is less than forty (40) feet. An open space of at least forty-eight (48) inches by forty-eight (48) inches must be allowed for the planting of a Shade Tree. When such tree has outgrown this space, or when a sidewalk has been laid without allowing such space, the sidewalk shall be repaired or re-laid at the expense of the property owner, so that at least twelve (12) inches is left between the base of the Shade Tree and the edge of pavement. This requirement shall take effect for owner-occupied premises when title is transferred and shall be included in the Buyer's Notification Inspection required by these Ordinances. Otherwise, this requirement shall take effect in accordance with law.

(c) No Shade Tree shall be planted on any street or highway where curbs have not been constructed.

10-101.15

DECLARATION OF PUBLIC NUISANCE

Any Shade Tree or any tree growing on private property that overhangs any street or highway of the City in such manner that it obstructs the visibility of any traffic control device or, in the opinion of the Department or the Bureau of Police, endangers the life, health, safety or property of the public, or which is affected by any contagious disease or insect infestation, shall be declared a public nuisance. The owner of the property shall be notified in writing of the existence of the nuisance and given reasonable time for its correction or removal. If it is not corrected or removed within the allotted time, the Department shall cause the nuisance to be corrected or removed, and the cost thereof may be assessed to the owner as provided by law.

10-101.16**DEPARTMENTAL COOPERATION**

There shall be close cooperation between the Department and the other City departments when their work affects Shade Trees. The Bureau of Codes Administration shall preserve the integrity of the Shade Tree system in permits that may affect Shade Trees and shall include the condition of shade trees and sidewalks affected by shade trees in its inspections. All sewer, lighting and paving plans shall be cleared with the Department. The City Planning Commission, Zoning Administrator and the Department shall work together planning for the present and future welfare of the City's Shade Trees. The Department shall work closely with other City departments and bureaus in the interest of the Shade Tree system and public safety.

10-101.17**CIRCUMSTANCES REQUIRING TREE REMOVAL**

(a) The Department and/or the Bureau of Codes Administration shall order removal of a Shade Tree for the following reasons:

- (A) roots are getting into water or sewer lines or causing structural damage;
- (B) tree is infected or diseased;
- (C) tree is dead;
- (D) primary roots are lifting sidewalks/pavement up more than six (6) inches;
- (E) other circumstances based on approval by the Department Director or an appointed designee.

(b) The Bureau of Codes Administration shall notify the Department each time it orders the removal of a Shade Tree.

10-101.18**NOTICE OF ACTION**

Whenever the Department proposes to plant, transplant or remove Shade Trees on any street or highway, written notice of such action shall be given to the property owner by regular mail at least seven (7) days prior to the undertaking, unless the decision is based on an emergency condition.

10-101.19**ANNUAL REPORT**

The Department shall annually report to the City Council its transactions and expenses for the last fiscal year regarding Shade Trees.

10-101.99**PENALTY**

Any person who violates the provisions of this chapter shall be subject to the General Code Penalty, Section 1-301.99, of these Codified Ordinances.

SECTION 2. Section 8-107.3 of the Codified Ordinances of the City of Harrisburg is hereby amended by adding the following amendment to the Property Maintenance Code:

302.10 Shade Trees

The Codes Administrator, or designee, shall order removal of any Shade Tree located between the curb and the sidewalk for any of the following reasons:

- (a) roots are getting into water or sewer lines or causing structural damage; or
- (b) tree is infected or diseased; or
- (c) tree is dead; or
- (d) primary roots are lifting sidewalks/pavement up more than six (6) inches; or

- (e) other circumstances based on approval by the Codes Administrator or an appointed designee.

SECTION 3. DELEGATION

Appropriate City officials are authorized and directed to take such actions as are necessary to effectuate this ordinance

SECTION 4. SEVERABILITY

If any provision, sentence, clause, section or part of this ordinance or the application thereof to any person or circumstance is for any reason found to be unconstitutional, illegal or invalid by a court of competent jurisdiction, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared as the intent of the Council of the City of Harrisburg that this ordinance would have been adopted had such unconstitutional, illegal or invalid provision, sentence, clause, section or part not been included herein.

SECTION 5. REPEALER

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 6.

EFFECTIVE DATE

This Ordinance shall take affect in accordance with the law.

Seconded by: Linda Thompson

PASSED by City Council on the 25th day of March 2003

SIGNED by the Mayor on the 27th day of March 2003

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